

# THE WATCHDOG

A Periodic Newsletter from  
The Office of the United States Trustee – Region 16

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It is hard to believe that it has been a year since I first was appointed United States Trustee for Region 16. In the last issue, published at the beginning of my tenure, I noted that I had high hopes for the upcoming year, both for the United States Trustee Program and the bankruptcy

community at large. As reflected in this issue of the Watchdog, thanks to the outstanding work of the United States Trustee Program employees, those hopes were not only met, they were surpassed.

In summary, we have continued to enhance our civil enforcement efforts, with great success; have internally restructured our office and operations to effectively deal with diminished caseloads; and effectively maintained our case administration and trustee oversight and training. As a result, we have been able to accomplish more tasks with the same, and sometimes diminished, resources.

Among our accomplishments, some of which are listed in this publication, we have conducted regular meeting and training sessions for our Trustees; and with respect to our eight newly appointed trustees, had a two-day regional training at our offices in Los Angeles and a week long training session at the Department of Justice's national training facility. Additionally, at the end of September, 2004, we had a two-day seminar for all trustees in the region, focusing on ways to enhance trustee administration of asset cases and perfect our already strong relationship and processes with respect to civil enforcement. The seminar undertook an examination of ways to administer asset cases more efficiently, included a

guest trustee speaker from the Northern District of California and a review of rules, procedures and forms used in other districts within the state. Two committees formerly established to examine the issues in Los Angeles were enhanced with trustee participation throughout the region.

Internally within the Program, we are developing a national litigation training skills workshop to provide intensive litigation training for our attorneys, and regionally, in conjunction with other regions in the 9th Circuit, have developed a brief bank to provide easy access to pleadings for our Program employees. Both of these will provide useful resources to our staff.

Our National Civil Enforcement Initiative has been enhanced by additional focus on creditor abuses and debtor education. In this regard, Region 16 has been at the forefront, actively participating in a number of diverse consumer fairs, speaking at consumer education programs on financial issues, and providing financial literature to debtors in our meeting rooms. We have also advised our Chapter 13 trustees that we will authorize their operations to conduct educational sessions for debtors who are seeking to get through the bankruptcy process.

Of course, our successful endeavors would not be possible if it were not for the efforts of our employees, working in cooperation with our trustees. I thank each of them for their continued efforts and enthusiasm which they bring to their jobs. I invite members of the bankruptcy community to offer any comments they may have to enhance our ability to protect the integrity of the bankruptcy system.

*Steven J. Katzman*  
United States Trustee

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## **CRIMINAL CASES**

### Bust-Out Participants Sentenced

As reported in the previous issue of *The Watchdog*, **Klara Vasserman and her husband Valery** were part of a business and personal credit bust-out scheme that resulted in \$11 million in losses. Mr. Vasserman was sentenced in January 2004 to more than three years in prison and ordered to pay approximately \$4.9 million in restitution. Mrs. Vasserman was sentenced in May 2004 to 12 months in prison and ordered to pay nearly \$500,000 in restitution. They had both pleaded guilty to 10 felony counts, including conspiracy, mail fraud and wire fraud.

### Sentencing For Defendants Charged In The March 2003 Santa Ana Bankruptcy Fraud Sweep

As reported in the April 14, 2003 Issue No. 12 of *The Watchdog*, **Sharon Lynn Egan** was one of the 13 defendants charged in the Bankruptcy Fraud Sweep by the Santa Ana office of the U.S. Attorney for bankruptcy fraud. Prior to filing, Egan incurred approximately \$500,000 in debt using a large number of credit cards to purchase Rolex watches and other goods, which she sold for cash. During the bankruptcy, she made false statements to conceal her use of the credit cards. The U.S. Trustee (UST) obtained dismissal of Egan's bankruptcy case with prejudice on 10/29/02 and referred the matter to the U.S. Attorney. On 3/29/04, Egan was sentenced to two years probation after pleading guilty to making a false statement.

On 5/24/04, **Frank R. Martinez**, who was also one of the 13 defendants charged in the bankruptcy fraud sweep, was sentenced to 13 months in prison followed by three years supervised release and ordered to pay a \$10,000 fine, based on his guilty plea to one count of bankruptcy fraud. Martinez engaged in a scheme to defraud creditors of his business "clients" who were facing foreclosure. Martinez had his clients sign grant deeds temporarily transferring a partial interest in their home to a fictitious person in whose name Martinez had filed a bankruptcy case, thereby fraudulently delaying and hindering a lawful foreclosure proceeding for a number of months. His scheme was discovered by the UST in 2000. An ensuing investigation uncovered several fictitious chapter 7 filings and Martinez's involvement as the mastermind. In February 2001, the UST obtained injunctive relief against Martinez and a \$6,086 fine, which has been paid in full.

### Debtor Sentenced For False Statement And Misuse Of Social Security Number (SSN)

As reported in the previous issue of *The Watchdog*, **Allie Gloria East, aka Nicole King**, pleaded guilty to charges of making false statements in her bankruptcy case, which included failing to disclose five bank accounts, filing a fraudulent declaration denying her use of aliases and using a false SSN on a credit card application. On 5/30/04, she was sentenced by the Hon. Robert M. Takasugi to two years probation with a condition of 400 hours community service and \$300 special assessment.

### Debtor Convicted Of Concealing Bank Accounts, Using False SSNs

On 8/3/04, Judge Florence Marie Cooper sentenced **Charly Sion Hagege** to 12 months imprisonment, \$775,668 restitution, three years supervised release, and a \$400 special assessment. On 3/18/04, a jury found Hagege guilty of making false statements and concealing assets, including bank accounts, in his bankruptcy, and using false Social Security Numbers (SSNs). Hagege obtained a bankruptcy discharge by claiming he had one bank account with a \$50 balance, when he had accounts in Luxembourg, Israel and the U.S. with balances of more than \$775,000, some of which were opened using false SSNs and a false company name. Hagege's largest creditors were Polo Ralph Lauren and the IRS, to which he admitted owing \$14 million and \$4.5 million, respectively.

### Ponzi Operators Arrested, Bankruptcy Seeking \$21 Million Discharge Dismissed

**Dennis and Brenda Willingham** attempted to discharge \$21,639,703 in unsecured debt, while conceding they paid off early investors in their alleged strawberry business with funds obtained from subsequent investors. They failed to provide documentation of income, expenses, or business transactions, despite seven sessions of their §341(a) meeting. The debtors agreed to dismiss their case with a 42-month bar on re-filing. The UST referred the case to the Ventura County District Attorney who filed a 74-count felony complaint against the debtors, who have been arrested and incarcerated.

## **DEBTOR ID**

### Amendments To Social Security Numbers

The UST continues to observe numerous errors in bankruptcy filings involving SSNs and names. When correcting an error, debtors and their attorney should fully comply with the Instructions Regarding Amendments to Social Security Number issued by the Clerk of Court, as revised 3/12/04. Those Instructions set forth the procedure for amendments. Failure to comply with the Instructions could result in a motion to dismiss the bankruptcy case and, in cases where similar mistakes are routinely made by an attorney or preparer, disgorgement of fees.

At the chapter 13 plan confirmation hearing of **Guadalupe and Christina Vasquez**, the person representing himself to be Mr. Guadalupe failed to present legible photo identification. His California driver's license was mutilated and did not match the physical description on the license. Debtors' attorney had only met with Mrs. Vasquez and had never seen Mr. Vasquez. The UST joined in the chapter 13 trustee's motion to dismiss the case. Judge Mitchel Goldberg dismissed the case with prejudice, imposing an in rem order on the debtors' residence.

## **CHAPTER 11**

### Trustee Elections

In the case of **Gordon Sand Company**, the debtor filed a motion to appoint an examiner for the purpose of valuing an account receivable with a face amount of \$1.5 million, and evaluating the ability of debtor's principal to repay the amount owed. The UST, joined by the IRS, opposed debtor's motion, requesting the appointment of a chapter 11 trustee.

The UST argued that during the almost two years that the case was pending before the court, debtor's principal failed to disclose the existence of the account receivable. The UST also argued that debtor would be unable to confirm a "new value" plan of reorganization until debtor's principal repaid any outstanding amount owed by him to the debtor. Judge Barry Russell denied debtor's motion for an examiner and granted the UST's request for a chapter 11 trustee. Timothy Yoo was appointed.

In the case of **Barry I. Fireman**, a §1104(b) meeting of creditors to elect a permanent trustee resulted in the nomination of two trustees: Leonard Gumport, the interim trustee, and Howard Grobstein, the candidate nominated by the party requesting the election. As a result of a number of disputes, the UST filed a Report of Disputed Election with the U.S. Bankruptcy Court for the Central District of California (Court) on 2/3/04. Judge Erithe Smith confirmed Gumport as the permanent trustee.

### Antiquities Case With No Records Converted to Chapter 7

**Philip J. Greco and Jane A. Fisher**, who were in the business of recovering ancient artifacts from wrecks at sea, listed approximately \$10 million worth of artifacts allegedly located around the U.S. and in Kuala Lumpur. At the §341(a) meeting, they disclosed they may have \$5 million in other antiquities, as well as approximately 400 additional pieces in the Philippines. The debtors testified that they had no inventory list, no insurance, had not filed tax returns, and may have put the assets in the name of one of their companies. On motion of the UST, Judge Arthur Greenwald converted the case to chapter 7 and ordered the debtors to immediately cease all business operations and turn over all assets to the chapter 7 trustee.

### Court Orders Disgorgement Of Compensation

In the case of **Ryco Electrical Products, Inc.**, Judge Alan Ahart granted, in part, the UST's motion for an order disgorging compensation paid to the debtor's president in excess of authorized amounts. The Court directed the president to return \$2,146 in compensation. The Court denied the UST's request for disgorgement of other compensation on the grounds that it was the subject of an earlier Court-approved settlement agreement between the debtor and its largest creditor. The debtor's president also reimbursed the estate \$1,941 in compliance with an earlier order approving professional fees of an

attorney who represented the debtor and president in a state court matter.

## CHAPTER 13

Judge David Naugle dismissed the chapter 13 case of **Clifford Ridgley** with prejudice under 11 U.S.C. §349 and prohibited debtor from re-filing for 180 days. Ridgley's chapter 13 plan was blank and the filing included a fractionalized interest in real property.

### Unsecured Portion Of Secured Debt Brings Aggregate Debt Over Maximum Allowed

**Jackson Vincent Lord** filed his voluntary chapter 13 case on 12/5/03. The sole source of Lord's income was contributions from his roommate and brother. In amended schedules, Lord omitted the unsecured portion of secured debt on his residence in Schedules D and F. If the unsecured portion had been included, the aggregate would exceed the statutory maximum in a chapter 13 case. The UST filed a motion seeking dismissal of the case under 11 U.S.C. §1307 based on Lord's ineligibility to be a chapter 13 debtor. On 3/16/04, Judge Smith granted the motion.

### Repeat Filers

In the Chapter 7 cases (converted from chapter 13) of husband and wife **John Hagey and Kuniko Tanaka**, the chapter 7 trustees, joined by the UST, brought motions to dismiss with prejudice under 11 U.S.C. §349 due to debtors' abuse of process in filing six bankruptcy cases between March, 2002 and March 2004. Judge Goldberg imposed a 10 year bar to discharge and a 5 year bar to re-filing any chapter unless approved by the Court after notice and hearing. In rem relief was granted as to all real estate and autos owned by debtors. The scheduled debt in the most recent case filed by Tanaka was \$50,155.

**Kenneth K. Wong** filed a chapter 13 petition on 5/20/03 and subsequently converted his case to chapter 7. Between Mr. Wong and his wife, eight chapter 13 cases were filed from 2000 to 2003, ostensibly to obtain the protection of the automatic stay against foreclosure of their residence. The majority of these cases resulted in dismissal for failure to make plan payments in chapter 13. The UST filed a motion under 11 U.S.C. §105(a) and §349(a) seeking the Court to impose a 365 day bar against Mr. Wong to stem his abuse of the bankruptcy process as a serial filer. On 2/20/04,

Judge Samuel Bufford granted the UST's motion to dismiss Wong's case and imposed a 365 day bar prohibiting Wong from re-filing another petition under any chapter.

As a result of the findings of the UST's joint investigation with chapter 13 trustee Kathy Dockery, the UST objected to the confirmation of the **Shirley Yvonne Brown's** chapter 13 plan on the grounds that she was abusing the bankruptcy system with multiple and serial filings to improperly delay a real property foreclosure for a number of years. Together with her husband and their son, debtor had filed 10 chapter 13 bankruptcy cases in less than 9 years, forestalling the long-delayed foreclosure of their residence since their most recent payment default in 2001. Judge Ernest Robles granted the UST's motion and denied plan confirmation, granted in rem relief as to the debtor's residence, and dismissed the entire chapter 13 case with a 365 day refiling bar in all chapters. Further, at the request of the chapter 13 trustee, Judge Robles specifically retained jurisdiction to consider a motion to disgorge fees against debtor's counsel.

## § 727 ACTIONS

### Debtor Disposes Of Watches And Jewelry To Fund Gambling

Judge Robert Alberts denied the discharge of **Christ Tran**, preventing the discharge of \$212,235 in credit card debt. Tran, who received unemployment benefits since 2002, listed \$2,280 in assets and disclosed no losses or transfers. At his §341(a) meeting, he testified that he purchased 25 watches (Citizen, Seiko, Movado) in the year before filing and threw most of them away after damaging them. He also testified that a diamond necklace he bought in 2003 was damaged while he was in the shower so he threw it in the trash. At a subsequent examination conducted by the UST, Tran modified his testimony and stated that he sold most of the items in a casino parking lot to fund his gambling.

### Concealment Of Assets Leads To Denial Of Discharge

In the case of **Gina Respicio**, Judge John Ryan denied the discharge of \$30,000 of unsecured debt. The UST alleged that debtor made false oaths by failing to disclose on her bankruptcy schedules her ownership interests in her residence and two vehicles.



### Debtor Fails To Disclose Inheritance

Judge Alberts approved a stipulation between the UST, debtor **Stanley Diggs**, and the chapter 7 trustee John Wolfe providing that debtor waive his discharge and that his prior order of discharge be vacated. Debtor initially failed to disclose an inheritance to which he was entitled. He subsequently amended his schedules to list a possible inheritance and received the proceeds of \$24,000 during the pendency of the case. However, he failed to turn them over to the chapter 7 trustee. The stipulation prevented the debtor from discharging unsecured debt of \$24,472.

### Failure To Respond To UST's Discovery Deemed Admission Of Facts

The UST filed a complaint to revoke the discharge of **Gregory Akarakian** for submitting false income and expense information on his schedules. Debtor's failure to file any response to the UST's discovery was deemed an admission of all of the facts set forth in the UST's Request for Admissions. Judge Russell set the matter for trial. Debtor failed to timely participate in the preparation of the Pre-Trial Order, which resulted in the Court's signing the UST's Pre-Trial Order that set forth there were no issues to be tried as a result of debtor's deemed admissions. The debtor stipulated to the revocation of his discharge and the payment of \$1,000 to the OUST as a recovery of attorney time devoted to this matter. The revocation prevented the discharge of \$57,004 of unsecured debt.

## **SUBSTANTIAL ABUSE [§707(b) Actions]**

### Prospects Of Future Employment Cause For Dismissal

Judge Kathleen Lax dismissed the case of **James "Lights Out" Toney**, preventing the discharge of \$843,606 of unsecured debt. Toney is a professional boxer and heavyweight championship contender, whose counsel contended that a recent injury would prevent Toney from repaying his debt. Toney listed monthly expenses of over \$30,000 and testified that his regular expenses included payments for luxury automobiles, two nannies, and a lavish home with six wide screen TVs. Prior to filing, he had given gifts of cash and jewelry to his fiancée, friends, and family members. He stated that he could make millions in his next fight. Rather than

facing action by the UST to dismiss his case, Toney negotiated a voluntary dismissal of the case.

### Credit Card Abuse

Despite lack of any earned income for the five calendar years prior to filing, **Jia Guo** sought to discharge \$121,219 of unsecured debt, most of which had been incurred during the past 18 months. UST investigation revealed an extravagant lifestyle, as debtor built up credit card debt with shopping for high-end fashion, shoes and cosmetics, luxurious beauty, hair and spa treatments, frequent dining at expensive restaurants for herself and unidentified companions, purchasing a pair of late model Porsches, a 996 Turbo sports car, a Cayenne S Sports Utility Vehicle, and jewelry, including a \$1,400 purchase made only 11 days prior to the filing date. Guo admitted that her spending increased in the nine months between the termination of support monies from her parents and grandparents and the bankruptcy filing date. She accumulated enough debt to exhaust over \$112,000 in equity proceeds from a real property sale and still have the large debt listed in her petition. Judge Ellen Carroll granted the UST's motion to dismiss.

**Vahe Hamzoian** sought to discharge approximately \$257,305 of unsecured debt. Debtor had over 20 balance transfers and cash advances on 39 credit cards, as well as major purchases at Home Depot and Sears relating to the remodeling of his home, which he sold just before filing. He also purchased a \$3,000 television and stand a few months prior to filing. The debtor was unable to provide evidence or explanation for the other charges. Judge Robles found that debtor was not operating in good faith and granted the UST's motion to dismiss the case.

**Sarwat R. Hikal** sought to discharge \$138,727 of unsecured debt. The UST filed a motion to dismiss, alleging that debtor incurred this credit card debt within the year preceding his bankruptcy filing, when Hikal's gross income averaged less than a \$1,000 a month, which amount he had earned since at least 2001. Based upon the totality of the circumstances, Judge Ellen Carroll granted the UST's motion.

Judge Ahart granted the UST's motion to dismiss the case of **Frank T. Koga**. The debtor sought to discharge \$120,012 of unsecured debt. Between July 2002 and September 15, 2003, debtor used 14 credit cards to charge expenses for dining, toy collectibles, loan advances, and recreational activity in Las Vegas. In one instance, the debtor charged

\$798 in Las Vegas for dinner. Debtor also obtained 19 cash advance transactions from nine different credit cards, totaling \$11,451 cash and \$295 in fees. Ten of those advances occurred in Las Vegas. The Court found that the debtor was not operating in good faith and dismissed this case.

**Tian Tsen Lee** sought to discharge almost \$234,000 unsecured debt for credit card and gambling obligations. He incurred at least \$70,000 in credit card charges within 18 months before filing bankruptcy and spent \$14,000 per month when his monthly gross income was less than \$1,800. UST investigation revealed that debtor failed to account for items he received in a marital settlement agreement, including a 2002 Lexus RX 300 SUV, a 2001 Toyota Echo, and a gun collection. Despite the accumulation of assets and large amount of unsecured debt, the debtor listed only just over \$6,000 of personal property assets. Judge Ellen Carroll granted the UST's request to dismiss.

**Carroll Lewis** sought to discharge over \$97,000 of unsecured debt, virtually all of which had been incurred during the two years prior to filing, although she had received no income at all for the three calendar years prior to filing for bankruptcy. Debtor charged purchases at Macy's, Nordstrom's, Neiman Marcus and Sak's Fifth Avenue, while concurrently using her 17 credit card accounts to float the balance and incur still more debt. Judge Maureen Tighe granted the UST's motion to dismiss.

**Swee Chu Peng** sought to discharge \$122,820 of unsecured debt. The UST filed a motion to dismiss alleging that Peng incurred about \$80,000 in credit card charges within the year of filing for bankruptcy, when her gross income was only \$1,280 per month. During the course of the UST's investigation, Peng admitted that she did not have either the ability to repay these obligations, or any reasonable prospect of repayment, even as she was continuing to incur such liabilities. Judge Ellen Carroll dismissed the case.

Judge Robles granted the UST's motion to dismiss the case of **Duoc Sa**. The debtor listed \$155,609 of unsecured credit card debt and cash advances and only \$1,830 in personal assets, with no real property. Debtor was unemployed with no current income and expenditures of only \$400. Debtor earned \$5,740 in 2001, \$5,900 in 2002 and \$4,000 in 2003.

The UST filed a motion to dismiss the case of **Wing Man aka Norman Man**, alleging that the debtor never intended to repay \$166,849 in credit card debt. The debtor earned a total of \$15,000 in the three years prior to filing for bankruptcy but took large cash advances and charged excessive amounts on restaurant dining and travel. Judge Ahart ordered the case dismissed.

#### Quitting Job Post Petition Prevents Discharge

Judge Tighe granted the UST's motion to dismiss the case of **Michael Carrasco**. Debtor filed for chapter 7 relief despite having net monthly disposable income, which would allow him to repay almost 34% of his unsecured debt under a 36-month plan, or over 56% under a 60-month plan. In defense, debtor attempted to undermine the grounds for the UST's motion by voluntarily quitting his job as a customer service representative post-petition, a strategy which the Court rejected as lacking in good faith. Dismissal of the case prevented the discharge of \$8,808 of unsecured debt.

#### Anticipated Termination Of Employment Not A Reason For Discharge

**Gabriel Garcia Cardoza** sought to discharge \$55,032 of debt. The UST filed a motion to dismiss, alleging that the debtor could pay 71% of the scheduled debt in a three year plan without adjusting his lifestyle, as the petition reflected \$1,262 in excess net disposable income without any adjustments to his schedules. The debtor argued that his job was going to end soon and he was not certain that he would be able to find comparable employment. Judge Greenwald granted the UST's dismissal motion.

#### Spouse's Income Included In Ability To Pay

In the case of **Massoud Kazerooni**, recalculation of debtor's income to include spousal income, tax refunds and contribution of \$400 to the mortgage payment by debtor's son, resulted in a monthly disposable income of \$1,480, which would pay 95% of the unsecured debt of \$49,657 over three years. Debtor argued that most of his debts were incurred in a prior marriage, that his present spouse should not have to contribute to their payment, and that the spouse's separate debts were not included in the calculation. Debtor also argued that his spouse desired to contribute to the grandchildren and would not allow her income to be used to fund a chapter 13 plan. Judge Naugle overruled debtor's objections, noting that non-debtor spousal income was properly

included in determining ability to pay, and ordered dismissal.

#### Understated Income

The UST brought a motion to dismiss the case of **Daniel and Heather Costello** alleging understated income. The debtors opposed the motion on the grounds that their financial circumstances changed after the filing of their case. Judge Peter Carroll was not persuaded by the argument and granted dismissal if debtors did not convert their case to one under chapter 13. Dismissal would result in repayment of \$20,476 in unsecured debt.

#### 401K Plan Payments Added Back To Income

The UST alleged **Lorenzo S. Deodanes** had under-reported his disposable income and continued to fund his 401K plan and vacation fund. The UST also alleged that certain expenses were unreasonable, including home maintenance for a rental apartment, food expenses of \$600 for two persons, recreation of \$150 and taxes of \$100, which may be paid in a chapter 13 plan. The UST argued that debtor had an ability to fund a chapter 13 plan with a 70% repayment to creditors. Judge Ahart dismissed the case, preventing the discharge of \$22,640 in unsecured debt.

Over opposition by the debtor, Judge Vincent Zurzolo granted the UST's motion to dismiss the case of **Pamela D. Harris**. The UST's analysis revealed that the 33 year old debtor had \$468 net monthly disposable income, inclusive of two separate retirement contributions to a 401(k) retirement plan, as well as to a private pension fund. In addition, debtor had purchased a house three months prior to filing. Even with the additional tax burden from the temporary cessation of the retirement fund contributions, Harris could repay 37% of her unsecured debt under a 36-month plan, 62% under a 60-month plan. Dismissal of the case prevented the discharge of \$40,931 of unsecured debt.

Judge Russell granted the UST's motion to dismiss the case of **Joan and Ray Sandoval**. Debtors listed approximately \$52,554 in unsecured debt and their schedule J included \$1,550 in credit card payments. The UST proposed adjustments for 401(k) deductions and payments for their daughter's car, for which the daughter was making the payments.

Judge Tighe granted the UST's motion to dismiss the case of **Rodolfo and Irma Andrade**. Debtors had filed for chapter 7 relief despite having almost

\$1,400 in net monthly disposable income, including post-petition contributions of \$198 per month to their 401(k) retirement plans. Even taking into account the additional tax burden from the temporary cessation of such contributions, debtors could repay 49% of their unsecured debt under a 36-month plan, 82% under a 60-month plan. Dismissal of the case prevented the discharge of \$19,772 of unsecured debt.

**Paul and Kimberly Masoner** listed monthly net income of \$3,723 and monthly expenses of \$3,692 on their schedules. The UST discovered that they had understated their income and had been contributing at least \$1,000 per month to their 401(k) plans. Judge Ryan agreed that the debtors had the ability to fund a chapter 13 plan and, therefore, were not entitled to discharge their \$164,982 credit card debt.

**Craig and Annette Rodgers** had over \$600 in net monthly disposable income, including contributions to Mrs. Rodgers' retirement plan. Over the debtors' opposition regarding the "seasonal" nature of their income as a car salesman and a teacher, respectively, Judge Zurzolo found that even taking into account the additional tax burden from a temporary cessation of this retirement fund contribution, debtors could repay 45% of their unsecured debt under a 36-month plan, 76% under a 60-month plan. Dismissal of the case prevented the discharge of \$43,020 of unsecured debt.

#### 401K Loan Repayments Not Allowed

Judge James Barr granted the UST's motion and dismissed the case of **Christine Rae Scott**, rejecting debtor's argument that her monthly 401k loan repayment expense of \$434 should be allowed since it was payment of a secured debt. Debtor was seeking to discharge unsecured debt of \$86,502.

#### Charitable Contributions Challenged

**Ida Towner** listed \$29,829 of unsecured debt and disposable income of \$553 per month. The UST challenged debtor's charitable contributions of \$100 per month as the debtor admitted at the §341(a) meeting that they had just started. The UST estimated that the debtor would be able to repay 79% of her unsecured debt over three years. Judge Naugle dismissed the case.

#### Special Diet For Marathon Runner Not A Necessary Expense

Judge Ahart found certain expenses scheduled by



**Shabbir S. Siwani** to be unreasonable, particularly as the debtor was single with no dependents. Debtor, a Lexus car salesman, earned \$40,000-\$60,000 per year. His monthly expenses included: food \$700-\$900, and \$500 for support of dependents not living at home. Debtor argued that as a marathon runner of 15 years, he needed a high protein diet. The Court determined the amount excessive as that activity was a hobby. Additionally, debtor was not legally obligated to support his parents. The Court granted the UST's motion to dismiss, thereby denying the discharge of \$34,555 in unsecured debt.

#### Family Support Not Cause To Discharge Debt

**Barbara Christine Bloise** listed \$375,130 of secured debt, including a house and a motor home, and \$39,498 of unsecured debt. In addition to recommending adjustments to understated income and high food and recreation expenses, the UST recommended return of the motor home and adding the deficiency to the unsecured debt, thus giving a 53% payback to unsecured creditors over three years. Judge Naugle dismissed the case.

Judge Bufford ordered dismissal of the case of **Kren Gasparian** after the UST demonstrated that the debtor had the ability to repay unsecured creditors a portion of the \$71,300 owed. The UST argued that support payments to the debtor's parents were not legally required and the Court should also disallow the debtor's 401(k) contribution in determining debtor's ability to repay his creditors.

**Myrna Magana** sought to discharge \$16,951 of unsecured debt, alleging her excess income was used to support her parents and siblings. Judge Lax stated that while supporting other family members is often a noble gesture, it is not a "necessary expense" that takes precedence over repaying creditors. The Court also found several of the debtor's expenses excessive. The Court gave the debtor the option of dismissing the case or converting to chapter 13.

Judge Bufford dismissed the case of **Uilda Palencia** after the UST demonstrated that the debtor had the ability to repay her unsecured creditors a portion of the \$14,728 owed. The UST argued that support payments to the debtor's mother were not legally required and should not be considered in determining the debtor's ability to repay a portion of her debt.

**Jose and Maria Rocha** failed to respond to the UST's request for proof of income and certain expenses. The UST requested dismissal of the case. Debtors filed an opposition and amended schedules. The Court noted the changes, including omission of a 2004 Toyota Tacoma and the accompanying loan. Debtors' reply papers stated they were continuing to support a 24 year old daughter who was planning to enter dental school. Judge Meredith Jury dismissed the case, denying discharge of \$14,279 in unsecured debt.

#### No Legal Obligation To Support Boyfriend

The UST filed a motion to dismiss the case of **Barbara Boscia**, alleging that the debtor, who earned over \$87,000 annually, had the ability to repay a portion of her \$31,937 unsecured debt. The UST argued that certain living expenses reported in the debtor's schedules exceeded reasonable amounts and that there was no legal obligation for the debtor to support her 33 year old boyfriend. Judge Ahart ordered dismissal.

#### Discharge Denied For Debtor Paying \$1,400 Per Month For Luxury Automobile

**Alexander Wald** sought to discharge \$99,888 of credit card debt, while continuing to pay \$1,400 per month to lease a BMW M5. The debtor, who was in the business of brokering luxury automobiles, argued that his clients would not do business with him unless he drove a luxury vehicle himself. Judge Lax granted the UST's motion for dismissal stating that \$1,400 per month for a car was an astounding figure and that debtor could pay a significant amount of his debt under a chapter 13 plan with "slightly less luxury."

#### Four Vehicles Unnecessary For Two People

**Arthur Lee Walker Sr. and Michelle Kathleen Walker**, a married couple with an eight year-old son, listed monthly car payments for four vehicles, totaling \$2,070. The UST moved to dismiss, arguing that four vehicles were not necessary for two adults in bankruptcy, and that if \$1,000 per month were spent for two cars, \$1,070 would be available to repay their debt. The Walkers also sought to make monthly payments on personal loans to particular creditors, and to spend \$200 a month for recreation. Judge Geraldine Mund granted the UST's motion, denying discharge of \$127,127 in unsecured debt.



### Anticipated Car Payments Not Allowed

In the case of **Janice G. Hamlin**, student loans and an anticipated monthly car payment of \$325 were disallowed. Judge Jury granted the UST's motion to dismiss, resulting in repayment of \$40,891 in unsecured debt.

### Boat, Quad Sport Vehicles, Automobiles Deemed Luxury Items

Judge Naugle denied discharge of \$28,367 unsecured debt to **Richard Lee Woodley**. The debtor listed assets valued at \$191,278, including a \$60,000 life insurance policy, \$65,000 retirement plan, two automobiles totaling \$47,000, two 2004 Polaris quads totaling \$9,000 and a \$8,000 boat. The UST successfully argued that the boat, one vehicle and the quads were luxury items and should be returned. The debtor's adjusted net monthly disposable income was sufficient to fund a 99% repayment plan over three years.

Judge Jury granted the UST's motion to dismiss the case of **Robert W. Moory**. He owns a 1986 Sea Ray boat valued at \$65,000, a 2003 motorcycle, a 2003 automobile and a pick up truck, in addition to his regular household items, and was attempting to discharge \$57,473 in unsecured debt, which must now be repaid.

### Internet, Computers And Cable TV Services Unnecessary

**John F. Mazzaferro**, a married debtor with no dependents, listed monthly payments for two internet connection services, two leased computers, and a high end cable television service, in addition to what appeared to be duplicative medical expenses and unexplained "maintenance." He nevertheless sought to discharge \$108,600 in credit card debt. The UST moved to dismiss the case, arguing that two adults living alone, neither of whom stated that they ran a home business, did not require such equipment and services in addition to the other unnecessary expenses, and could instead repay their debt. Judge Lax agreed and dismissed the case.

**Andre Zakarian** sought to discharge \$103,788 of unsecured debt. The UST filed a motion to dismiss, alleging that he incurred more than half of that debt, approximately \$55,000 in credit card charges, in a nine month period during the year preceding his filing when his annual income was only \$1,583. The UST showed that Zakarian's debt included gambling

in Las Vegas, vacations in and out of the state and purchases of large screen televisions, a digital camera, video gaming systems, decorative ceramics and home furnishings. Judge Zurzolo granted the UST's motion.

### Credit Cards Given To Sister In Lieu Of Rent

The UST filed a motion to dismiss the case of **Tina Godfrey** on the grounds that the unemployed debtor incurred in excess of \$205,000 credit card debt for purchases and cash advances, of which approximately 94% was for personal luxury items. Debtor alleged that the credit debt was incurred because she had owned a retail gift shop in an exclusive area and needed to dress as well as her clientele. Additionally, debtor alleged that because she lived with her sister, it was reasonable to allow her sister to use her credit cards for shopping in lieu of paying rent. Judge Thomas Donovan disagreed and dismissed the case.

**David French and Corrina French** sought to discharge \$44,565 unsecured debt. They had a monthly net income of \$7,150 and expenses of \$6,898. The UST noted income deductions for a §403(b) payment, a disbursement to a credit union, bond purchases, life insurance, and a TSP loan repayment. The UST's motion also challenged some of the debtors' expenses, including IRA and 401K loan repayments, and private school. Adjustments to the income and expenses, including annualization of a tax refund, would allow over a 100% repayment to unsecured creditors. The debtors responded that the most they could repay was 33%. Judge Naugle agreed with the UST and dismissed the case.

**Ron Markham** was prevented from discharging aggregate debt of \$25,979 due to debtor's ability to repay priority and unsecured creditors in full in 34 months if payroll deductions for a garnishment obtained by an unsecured creditor and a 401k loan were added back into the debtor's income. Judge Alberts ordered the dismissal.

Judge Tighe granted the UST's motion to dismiss the case of **Arturo Ramirez**. While Ramirez's schedules showed negative net disposable income, UST investigation revealed that he had almost \$1,100 in net monthly disposable income, including continuing, post-petition contributions to a 401(k) plan, as well as certain adjustments to excessive expenses for cable television, cellular phone usage, clothing, laundry and dry cleaning, and voluntary

payments on a non-residential real property parcel. Even taking into account the additional tax burden from the temporary cessation of retirement fund contributions, Ramirez could successfully repay 134% of his unsecured debt under a 36-month plan, 223% under a 60-month plan. Dismissal of the case prevented the discharge of \$26,500 of unsecured debt.

**Michael and Frances Zipper** scheduled \$66,619 in unsecured debt. The UST determined that deletion of duplicate creditors reduced the debt to \$34,964. The UST also questioned certain of debtors' monthly expenses. Adjustments to those expenses allowed for over 100% repayment of debtors' unsecured debt within three years in a chapter 13 plan. Judge Naugle dismissed the case.

#### Ability To Repay A Portion of the Debt Defeats Discharge

**Kevin and Michele Carroll** sought to discharge \$73,562 of unsecured debt. The UST demonstrated that debtors' net monthly income was understated and should have been \$5,329 instead of \$4,993. The UST also challenged certain monthly expenses, including tithing of \$433, as debtors had not tithed a similar amount during the past year; and \$70 for cell phones. Debtors did not challenge the adjustment to income, but indicated they were very active in their church and needed their cell phones due to Mrs. Carroll's pregnancy. Debtors stated they would also require \$325 for child care. Accounting for that additional expense, Judge Naugle granted the UST's motion to dismiss.

**Barbara Ann Delaney** was married but filed separately. She and her husband received a net monthly income of \$7,654. The UST estimated that debtor could repay 62%-73% of the debt over a three year chapter 13 plan with adjustments to their living expenses. Following a contested hearing, Judge Naugle dismissed the case, denying discharge of \$79,885 of unsecured debt.

**Melvyn and Teri Rollin** sought to discharge \$63,493 of debt while earning \$8,800 net monthly income. The UST alleged debtor could pay 81% of the scheduled debt in a three year plan by adjusting their scheduled \$8,800 monthly expenses by \$1,500. The UST questioned several of their expenses, including \$800 telephone, \$2,275 transportation and autos, \$312 storage and \$630 life insurance. Judge Lax dismissed the case based on the debtors' ability to repay.

UST investigation revealed that **Damien and Joy Vierra** had overstated their actual expenditures, including an auto lease payment which was about to expire, medical expenses which were reimbursed by their respective health insurance coverage, and an inflated clothing expense. The Vierras had over \$1,100 in net monthly disposable income, including their continuing, post-petition contributions to Mrs. Vierra's retirement plan. Based upon the totality of the circumstances, including the debtors' purchase of a satellite TV service on the same day they filed their bankruptcy case, Judge Ellen Carroll granted the UST's motion to dismiss, finding that debtors could repay 29% of their unsecured debt under a 36-month plan, 48% under a 60-month plan. Dismissal prevented the discharge of \$121,115 of unsecured debt.

#### Debtors Chose Stipulation To Dismiss Rather Than Oppose UST's Motion

In the case of **David and Maria Bradshaw**, UST investigation revealed underestimated income and over-withholding based on the prior year's tax refund of \$5,272. The UST also alleged that \$784 for private school, \$30 for life insurance, and \$75 for recreation were luxury items. Debtors responded that Mr. Bradshaw had \$1,118 of monthly unreimbursed expenses from his previous employment with a trucking firm; also that he had just changed jobs and was now making less money. With adjustments, the UST estimated that debtors could pay over \$1,000 per month, or 72%, in a chapter 13. Judge Goldberg dismissed the case pursuant to debtors' stipulation to dismissal of their case without prejudice, thereby saving discharge \$49,954 of unsecured debt.

#### Cases Dismissed Pursuant To UST Inquiries

By adjusting monthly net income to include retirement payments, retirement loan repayments, and a tax refund, and by adjusting the electricity and heating expense, overstated by \$129 per month, **Russ and Shawn Hopkins** had sufficient net monthly disposable income to pay 291% of the unsecured creditors over three years. Judge Naugle dismissed the case, denying discharge of \$24,526 of unsecured debt.

Judge Sheri Bluebond granted the UST's motion to dismiss the case of **Armen Kazarian** for failure to provide information in response to the UST's inquiry regarding debtor's income and \$171,797 in credit card debt.

**Rueben and Esther Panopio** sought to discharge \$17,000 of unsecured debt although they were paying over \$1,000 per month into a 401K plan. UST investigation revealed that the debtors may have real property that had not been listed on the schedules. The debtors chose not to attend the §341(a), and the case was dismissed by Judge Zurzolo.

### Conversions To Chapter 13

In the case of **Robert and Marilyn Barrett**, the UST argued that the debtors' 401(k) contribution should be disallowed and that their Schedule J expenses included certain dischargeable payments on credit cards. The UST also argued that the debtors, who earned over \$115,000 annually, had the ability to repay their \$82,142 in unsecured debt through a chapter 13 plan. Judge Bluebond allowed the conversion.

The UST filed a motion to dismiss the case of **Luis and Aida Conde** after the debtors, who earn over \$111,000 annually, failed to respond to an inquiry regarding certain excessive expenses reported in their schedules. The UST argued that the debtors had the ability to repay a portion of their \$50,139 unsecured debt. The debtors agreed to convert their case to chapter 13. Judge Ahart ordered the case dismissed if the case was not converted by September 1.

**John and Sonja Degenhard** sought to discharge \$61,248 of unsecured debt. They tried to defend a \$764 private school expense for their teenage daughter based on a letter from a therapist indicating that their daughter's self esteem could be damaged if forced to change schools. The UST argued that debtors could reduce many other expenses, fund a chapter 13 plan and still have enough money to continue to pay for private school if they were concerned about their daughter. Judge Barr agreed with the UST and allowed debtors to convert to chapter 13 in lieu of a dismissal.

In the case of **Benny and Sharon Huynh**, the UST established an adjustment to debtors' income and also demonstrated they earned an average of \$178,067 just from gambling in the three years prior to filing bankruptcy. The UST argued that debtors, who earned in excess of \$94,000 annually, had the ability to repay creditors with earnings from their employment, even without considering any gambling income. The debtors acknowledged that they had spent significant sums gambling in the years leading up to the filing and were no longer gambling. They

voluntarily converted to chapter 13 after Judge Bluebond indicated the Court would grant the UST's motion.

**Analeen Juenger** sought to discharge over \$43,000 of unsecured debt. The UST filed a motion to dismiss alleging a number of debtor's monthly expenses excessive for a single person without dependents, e.g., cigarettes \$250 (separate from recreation of \$150), office gifts \$50, and office lunches \$200 (separate from food of \$400). UST investigation also revealed that debtor had purchased a brand-new Subaru Forester only six weeks before filing. The UST alleged that with reasonable adjustments, debtor would have at least \$520 net monthly disposable income. Judge Ellen Carroll granted the UST's motion, but allowed debtor an opportunity to convert her case to a chapter 13.

The UST filed a motion to dismiss the case of **Joung Soon Lee** on the grounds that the debtor had the ability to repay 14% of her unsecured debt within three years and 23% within five years under a chapter 13 plan. Debtor argued that 14% was an unreasonably small percentage to meet the substantial abuse requirement to dismiss her case under §707(b). The UST replied that debtor had incurred approximately \$120,000 in gambling debt within 75 days of the bankruptcy filing, which, when added to her prior unsecured debt of approximately \$29,000, caused her to have approximately \$149,000 of unsecured debt at the time of the filing. This resulted in the 14% distribution under a chapter 13 plan instead of a 69% distribution had the gambling debt not been incurred. Judge Donovan agreed and dismissed the case, finding that debtor was not honest by incurring substantial debt within 75 days of her bankruptcy filing and then arguing that payment of only 14% under a chapter 13 plan did not qualify as substantial abuse. Debtor's counsel requested conversion to chapter 13, which the Court granted.

The UST filed a motion to dismiss the case of **Virginia K. Meneses** on the grounds that debtor's support of her three adult children was not reasonable and necessary and that the debtor had the ability to repay a substantial portion of her \$43,338 unsecured debt. All three children were college-educated and had scientific and technical backgrounds. Judge Bluebond found no evidence that the three adult children, who all live in the Philippines, could not work. The debtor voluntarily converted her case to chapter 13.



The UST conducted an extensive review of **Hagop Minassian's** \$135,295 credit card debt. Debtor testified that he spent significant sums on international travel for himself and family members while taking a voluntary leave from his place of employment. Debtor also traveled to Las Vegas for a gambling vacation prior to filing his petition. Debtor voluntarily converted his case to chapter 13 after the UST indicated he would file a motion to dismiss.

**Quy Dinh Tran** sought to discharge \$71,000 of credit card debt. Although not disclosed in his bankruptcy papers, Tran testified both at his creditors' meeting and at a court ordered examination conducted by the UST that the bulk of his debt related to cash advances used for gambling in the year prior to his filing. At the court ordered examination, Tran also testified that he had no documentation or witnesses to substantiate the gambling. The UST filed a complaint objecting to Tran's discharge on the basis of his failure to keep records and his inability to satisfactorily explain the disposition of estate assets. After answering the complaint, Tran, a cashier at a convenience store, filed a motion to convert his case to chapter 13 which was granted.

## **BANKRUPTCY PETITION PREPARERS**

### **[11U.S.C. 110]**

#### First Time Violators

Judge Peter Carroll was not persuaded by the explanations of **Maria Mercado and Diana's Travel** that the BPP had just recently begun preparing petitions for debtors, was unfamiliar with the provisions and requirements of §110, and had not violated the statute willfully and intentionally. The BPP had failed to: sign the petition, set forth BPP's name and address, include the BPP's SSN, or give the debtor a copy of the documents signed by the debtor prior to filing. The BPP had also accepted the filing fee and transmitted it to the Court with the petition. Judge Carroll fined the BPP \$500 for each violation. The Court also found that the BPP failed to disclose the amount paid to her by the debtor and ordered the entire fee of \$250 disgorged. The Court further prohibited the BPP from preparing any documents for compensation for filing with the Court pending payment of the fines and disgorgement.

Judge Goldberg enjoined **Norma Cohen** from engaging in the unauthorized practice of law based

upon her selection of claimed exemptions in a chapter 13 case. Judge Goldberg reasoned that the injunction was the first step in putting the BPP on notice to refrain from engaging in the illegal act of practicing law without a license. Any future illegal acts could result in severe penalties.

#### Repeat Offenders

As reported in the previous issue of *The Watchdog*, in cases before Judges Greenwald and Mund, CPA/BPP **Ira Berkowitz** agreed to disgorge \$600 that he overcharged, and, in addition, agreed to refrain from the unlawful practice of law. On 8/12/04, Judge Tighe found **Berkowitz** engaging in the unauthorized practice of law in another case and ordered him to return all monies to the debtor. According to the debtor, Berkowitz also collected \$300 for the filing fee, but never used the monies for that purpose. As a result, the debtor spent an additional \$209 to ensure that her petition was filed. The Court fined Berkowitz \$500 for violating §110(g).

As reported in the previous issue of *The Watchdog*, on 1/8/04, Judge Peter Carroll fined **Eugene Osborne and Osborne Paralegal Services** \$2,000 for various violations of §110, including receipt of payment from debtor of the Court filing fees, and ordered them to disgorge all fees of \$650 to debtors. The Court also enjoined the BPPs from the unauthorized practice of law, from using the word "legal" in advertising and from preparing documents for compensation for filing with the Court. On 5/14/04, Judge Ahart fined **Eugene Osborne and Osborne Paralegal Service** \$4,500 for numerous violations of §110 and ordered the BPP to return \$400 to the debtor. Osborne charged debtor \$800 for bankruptcy preparation services, but asked the debtor to say that he had only paid \$100. The debtor also testified that Osborne signed the debtor's name on a number of bankruptcy documents and did not give him a copy of his documents before filing them with the Court.

On 1/27/04, Judge Naugle granted the UST's motion to permanently enjoin **Harvey Pinkney and Online Paralegal Service** from preparation of any documents for filing with the Court. **Pinkney** took the filing fee and engaged in the unauthorized practice of law by explaining exemptions and the differences between the chapters. In another case, on 3/2/04, Judge Goldberg also permanently enjoined **Pinkney** from the preparation of bankruptcy documents, based on the UST's motion

and stipulation with **Pinkney** for a permanent injunction instead of seeking fines.

On 1/29/04, Judge Naugle enjoined **Sonia Resto and/or Resto Consulting Services** from the unauthorized practice of law, and ordered them to disgorge overpayment of \$50 in fees to debtors. On 3/2/04, Judge Goldberg enjoined **Richard Hoang, Ellen Batch and/or People's Solution, and Sonia Resto and/or Resto Consulting Services** from the unauthorized practice of law and from accepting or receiving the filing fee from debtors in any future cases. On 5/11/04, Judge Jury also enjoined **Sonia Resto and Resto Consulting Service** from engaging in the unauthorized practice of law, and granted the UST's motion for fines of \$50 payable to the Court and \$250 to the UST for taking the filing fee and filing the petition on behalf of debtor.

On 3/3/04, Judge Naugle permanently enjoined **Jose Peñate, Rodney Spigner, and People Solutions** from solicitation of business or any other conduct with regard to preparation of documents for filing with the Court. On 8/17/04, Judge Meredith Jury heard two cases involving **Rodney Spigner**. In one case, he charged debtors a fee of \$291 and filed the petition on their behalf, even though he was previously enjoined from preparation of bankruptcy documents filed with the Court. In the other case, he charged debtor \$1,433.00, including filing fees, for preparation of her documents. Judge Jury ordered all fees returned and fined **Spigner \$2,500** in both cases. In 1997, **Spigner's** business, **Quality Paralegal Service and/or QPS**, had been enjoined from preparing bankruptcy documents, and **Spigner** himself was enjoined in 1998 from using the words "law," "legal" or "paralegal" in his advertising and solicitation of business.

On 5/24/04, Judge Peter Carroll fined **William Wixon of Wixon & Associates** \$500 and ordered him to disgorge \$200 in fees for taking the filing fee from debtor, explaining exemptions and the differences between the chapters. On 6/30/04, Judge Naugle fined the same BPP the sum of \$500 for taking the filing fee, and enjoined Wixon for the same violations of §110.

On 6/21/04, Judge Naugle granted the UST's motion and ordered **Theresa Thompson and National Institute Legal Center** to disgorge the full fee of \$200 to debtor, fined the BPP \$1,000, and enjoined them from preparing documents for filing with the Court. The UST alleged that the BPP: failed to sign the petition, provide an identifying number, or

disclose the total amount of monies paid by debtors to the BPP; used "legal" in its advertising; took the filing fee, and committed the unauthorized practice of law by giving legal advice about exemptions and the selection of chapter. On 6/22/04, for explaining exemptions and the differences between the chapters, Judge Jury enjoined **Theresa Thompson and National Institute Legal Center** from the preparation of documents for filing with the Court; fined them \$1,500 and ordered disgorgement to debtor of the \$195 fee.

Also on 6/22/04, Judge Jury enjoined **Kathy Millett** from preparing documents for filing with the Court for engaging in the unauthorized practice of law by explaining the differences in the chapters to the debtor, fined her \$500 and ordered disgorgement of \$200 in fees to the debtor. Additionally, on 8/9/04, for giving legal advice to a debtor in another case, Judge Peter Carroll enjoined **Millett** from preparing documents for filing with the Court, fined her \$200 and ordered disgorgement of \$200 in fees to the debtor.

#### Fines And Sanctions Imposed For Contempt

On 11/7/03, Judge Naugle permanently enjoined **Damien Robbins** from preparing any documents whatsoever for filing with the Court. In violation of the injunction order, Robbins prepared documents in another case filed 1/29/04. For violating the order, Judge Jury sanctioned Robbins \$5,000 for contempt, ordering \$500 in costs to the UST and fees of \$200 disgorged to debtors.

On 3/12/04, **Bianca Campuzano and National Institute Legal Center, Inc.**, in one case, and **Campuzano, National Institute Legal Center and Oscar Snow** in another case, were jointly and severally fined \$3,000 in both cases by Judge Naugle for failure to comply with prior Court orders requiring them to disgorge fees to the debtors and pay sanctions to the Court. They were also sanctioned an additional \$500 payable to the UST for having to bring the Orders to Show Cause for Civil Contempt (OSC) in both cases. The BBPs had previously been enjoined from preparing documents for compensation for filing with the Court.

On 3/12/04, Judge Naugle fined **Emily Moreno** an additional \$2,500 and sanctioned her an additional \$500 payable to the UST for contempt of a prior disgorgement and sanctioning order. She was also enjoined from preparing documents for compensation of any sort with the Court. On

3/29/04, Judge Peter Carroll granted the UST's motion for an OSC in another case where Moreno was the BPP. The Court issued an additional sanction of \$500 for failure to pay the original \$500 sanction and \$200 fee disgorgement. Judge Carroll also awarded \$500 to the UST for the costs of bringing the motion.

On 4/27/04, Judge Naugle sanctioned **Robert L. Juarez** \$500, enjoined him from using the word "legal" in advertising, and permanently enjoined him from the unauthorized practice of law. The BPP had provided advice regarding exemptions and the selection of chapter. By amended order entered 5/18/04 in another case, the Court granted additional fines against Juarez in the amount of \$3,000 payable to the Court and \$500 payable to the UST for violating the Court's prior Order. Juarez was ordered to appear on 8/31/04 to show cause why the Court should not issue additional sanctions for violating the Orders issued 4/27/04 and 5/18/04, and for violating the Order enjoining him from preparation of bankruptcy documents. On 7/13/04, Judge Jury permanently enjoined **Robert Juarez** from the unauthorized practice of law and fined him \$250 for explaining exemptions to the debtor. The debtor was present in Court and testified that she did not know what the exemption code numbers meant or the source of the claimed exemption statutes.

#### Fines, Disgorgements, Injunctions And Other Actions

**Irene Chavez-Harris** provided legal advice to debtor and prepared the bankruptcy petition without disclosing her identity or fees. On 7/16/04, Judge Mund enjoined the BPP from: failing to sign petitions that she prepares; failing to place on petitions that she prepares an identifying number; failing to file a declaration under penalty of perjury disclosing her fee; engaging in the unauthorized practice of law. The Court also fined the BPP \$150.

For taking the filing fees, explaining exemptions and the differences between chapters 7 and 13, Judge Jury permanently enjoined **Richard Galvez** from preparing any documents whatsoever for filing with the Riverside Division of the Court.

**Sheldon A. Guillory** failed to disclose that he had any part in preparing a debtor's documents. Based upon information provided by debtor, Judge Jury ordered disgorgement of the \$250 fees paid by debtor and fines in the amount of \$2,500. Guillory

was permanently enjoined from preparing any documents whatsoever for filing with the Court.

Judge Jury granted the UST's motion for fines and/or disgorgement of fees against **Amora Johnson** by permanently enjoining her from engaging in the unauthorized practice of law. The debtor testified in her deposition that she did not know what the exemption code numbers meant or the source of the claimed exemption statutes. Based upon debtor's testimony, Johnson stipulated to the permanent injunction.

Judge Naugle fined **James Kazak** \$500 for taking the filing fee, enjoined him from the unauthorized practice of law for giving advice regarding exemptions and the selection of chapter, and enjoined him from using the word "legal" in advertising. The BPP admitted that he had taken the filing fee in the form of a money order from the debtor and had given it to an attorney service for filing with the Court. He claimed, however, that he had neither used the word "legal" in advertising, nor given the debtor legal advice. The Court agreed with the UST and granted his motion. Judges Russell, Bluebond, and Tighe also fined Kazak for collecting the filing fee in four different cases.

Judge Peter Carroll fined BPP **Jackie Mathes and A.D.S. Typing Service** \$500 for taking debtor's filing fee, ordered disgorgement of their entire fee of \$200 for the unauthorized practice of law in selecting exemptions, and enjoined them from preparing documents for compensation for filing with the Court until the fine and disgorgement were fully satisfied.

Judge Naugle ordered **Emmanuel Okojie** to disgorge all fees received from debtor and enjoined him from preparing documents for compensation in the Eastern Division of the Court. The UST alleged the BPP had taken the filing fee from debtor and received \$241 in fees but reported only \$200; also BPP had informed debtor either that he was an attorney or worked for an attorney. Okojie responded that he charged debtor \$199 to prepare her petition and \$50 to drive to her residence. He had not revealed the driving charge in his bankruptcy documents. He admitted receiving the filing fee and filing the documents but not that he had told debtor he was an attorney or worked for an attorney. Okojie, who operated under the name of **Legal Services Associates, Inc.**, was also fined by Judges Zurzolo and Ahart in two other cases and was ordered to refund monies to one of the debtors.



Judge Naugle fined **Oscar J. Silva and Silva Income Tax Service** \$500 for taking the filing fee in cash and giving debtor legal advice regarding exemptions and selection of chapter. The BPPs were also enjoined from preparing documents for filing with the Court without further Order of the Court.

Judge Peter Carroll sanctioned **Deneen Smith** \$500 for using an incorrect identifying number for herself and \$500 for failing to give debtor a copy of the petition before it was filed with the Court. Smith was also ordered to disgorge her \$200 fee paid by debtor. Judge Bufford also fined Smith for failing to give a debtor a copy of the petition before it was filed with the Court and ordered the refund of monies to the debtor.

## ATTORNEY ACTIONS

### 9<sup>th</sup> Circuit BAP Affirms Fee Disgorgement

On 3/1/04, the Bankruptcy Appellate Panel (BAP) for the 9<sup>th</sup> Circuit affirmed the Bankruptcy Court's August 7, 2003 order disgorging all fees received by the debtor's attorney, James Hsaioheng Li of Anaheim, ordering the attorney to return \$5,000 to his client. The attorney had represented both an individual and a corporation without obtaining Court approval of employment, and filed an inaccurate disclosure of compensation. The BAP found that the Court has the authority to deny all fees for disclosure violations and that counsel's failure to obtain Court approval for employment precludes him from receiving compensation under §330.

### Bankruptcy Filed Without Debtor's Consent

On 3/23/03, the Court issued its order in the Disciplinary Proceeding of **Thomas C. Loffarelli**. **Loffarelli and George Perez** entered into a business arrangement for the purchase of real property wherein Perez provided the capital and Loffarelli the management of the rental. Thereafter, Loffarelli failed to tender mortgage payments or to inform Perez of the default in payments on the loan. Loffarelli filed a chapter 13 bankruptcy in the case of George Perez, without Perez's knowledge or consent. The case was dismissed. Perez learned of the loan default and bankruptcy filing and brought the matter to the attention of the chapter 13 trustee and the UST, who raised the issue with the Court. Judge Jury referred Loffarelli to the Court's disciplinary proceedings for his actions in forging

Perez's name to the bankruptcy documents. On 3/23/04, the Discipline Panel ruled that Loffarelli be suspended from practice before the Court and referred the matter to the U.S. District Court for further disciplinary proceedings. On 1/3/04, the State Bar of California had suspended Loffarelli from practice in California in connection with other matters.

### Disgorgements Ordered For Failure To Appear At First Meeting Of Creditors

In the case of Anthony and Dawn Larocque, debtors' counsel, **Vincent B. Garcia**, failed to attend the first meeting of creditors. The UST demonstrated that attending the meeting was within the scope of Garcia's limited appearance, as set forth in documents filed with the Court, and that, in one prior case, he had been ordered to disgorge \$200 for the same nonfeasance. Garcia responded that this was only the second instance in 14 years of practice that this had occurred; he appeared at the continued meeting of creditors and had performed significant work for the debtors. Judge Goldberg ordered disgorgement of \$200 to debtors and a donation to charity of \$200.

Debtors' counsel **Lloyd E. K. Pohl** failed to appear at the first meeting of creditors in the case of Jason and Maria Candelaria. On 8/17/04, Judge Jury granted the UST's motion and ordered Pohl to disgorge \$100 in attorneys' fees to debtors for his failure to appear.

In the case of Phyllis Bertha Roberson, debtor's counsel **Michael Sacks** failed to attend the first meeting of creditors, although he had represented that he would attend. The UST brought a motion under §329 and FRBP 2017 for the Court to determine if the fee of \$1,000 charged to debtor was excessive, and for disgorgement of the excessive amount. Pursuant to stipulation, Sacks agreed to disgorge half of the fee to debtor.

### Debtor's Counsel Ordered To Disgorge Entire Fee Of \$1,500

In the case of Hilda Rodriguez, debtor and her counsel of record, **Patricia Mireles**, made numerous inconsistent statements in documents filed with the Court about the amount of the fee agreed to and paid. The schedules and Statement of Financial Affairs were amended several times and the §341(a) meeting had to be continued three times. Judge Naugle ordered disgorgement of all fees of \$1,500.

### Fee Application Denied

On 3/17/04, Judge Smith denied with prejudice the first interim fee application of **Pryce Parker Hill, LLP** (“PPH”) in the case of Tony Chiu. PPH sought fees in the amount of \$8,387 and costs in the amount of \$145 for representing the bankruptcy estate on behalf of Robert Pryce, former chapter 7 trustee. The initial fee application hearing was continued several times to allow the UST to take the 2004 examination of Charlie Hill, partner of PPH, and review document production from PPH.

After extensive review of the documents produced by PPH as well as taking two days of 2004 examination of Mr. Hill, the UST filed supplemental objections to the fee applications based upon the evidence discovered during the 2004 examination.

The UST alleged that PPH failed to investigate estate assets, had numerous improprieties in its time records and billing statements, was paid fees by a third party without disclosure to the Court or the UST, increased without explanation its fees for certain work allegedly performed, premium billed for traveling and waiting time for Court hearings when PPH was appearing for multiple clients at the same time, transferred estate assets without Court approval, violated FRBP 9019 in failing to seek Court approval for a settlement, failed to object to debtor's discharge when it discovered the debtor wrongfully sold estate assets post-petition, and violated State Bar Rules 3-110, 4-200, and 3-700 by failing to act competently, charging for non-legal work as legal work, and creating a conflict of interest with its client, the bankruptcy estate.

### Fee Application Not Filed

Chapter 13 trustee Rod Danielson brought an action against debtor's counsel, **Michael A. Smith**, to recover excessive attorney's fees in the case of Joaquin Acosta, based upon the fact that the attorney collected fees of \$5,000 and failed to make the required fee application. The UST joined in the motion. Judge Jury ordered the full \$5,000 returned to the debtor.

### Serial Filings Merit Disgorgement

The UST joined in the motion of the Riverside chapter 13 trustee for an OSC in the case of Jesse Perez. The OSC required debtor's counsel to explain why three serially filed chapter 13 cases did not constitute bad faith sufficient to merit disgorgement of all attorney's fees charged in the

third case. Judge Goldberg determined that the serial filings constituted a manipulation of the system and ordered the **Price Law Group** to disgorge \$900 in fees and to pay \$250 to the chapter 13 trustee for the cost of bringing the motion.

## **PROFILE OF PANEL TRUSTEE HEIDE KURTZ**



Heide Kurtz was born and raised in San Francisco. After receiving a BA in History from UCLA and an MBA in Finance from USC, Heide returned to San Francisco, believing it to be a permanent

move back to her hometown.

For the next several years, Heide worked in various consulting and corporate banking positions, alternating between periods of work and extended periods of travel around the world to such remote places as New Caledonia, India and Burma. During that period, Heide was able to indulge her passion for skiing and skied a minimum of thirty days a year.

After several years of that lifestyle, Heide switched to a more substantive workload. She became the Business Manager for a chain of art galleries and also worked with a Panel Trustee in San Francisco with the intention of someday becoming a trustee herself.

Meanwhile, Heide and her future husband, Larry, a UCLA graduate living in San Pedro, conducted a long distance relationship before marrying in 1993. For the next year, there was an ongoing debate as to where they should reside until Heide buckled under and moved to Los Angeles in 1994. She took a position there as the Vice President of Metro Bank where she managed deposits for bankruptcy trustees.

Heide's accounting background and hands-on experience in operating mid-sized businesses enabled her to achieve her goal of becoming a trustee, and, one year later, in March of 1995, she was appointed to the Los Angeles Panel of Trustees. Over the past nine years, Heide has structured her practice so that she is able to competently and timely administer cases as well as

enjoy the freedom of self-employment. She has operated many businesses in both a Chapter 7 and 11 context since becoming a trustee. One of the strongest attributes Heide brings to the job is her ability to gauge the viability of continuing to operate a business within a bankruptcy context.

Heide finds the trustee work very satisfying, and particularly enjoys the variety of businesses and individuals she comes across in administering cases. One of her most challenging appointments was overseeing the operations of 11 Denny's restaurants in three states before they were sold for an aggregate amount in excess of \$5 million through the Bankruptcy Court. One of her tougher assignments was having to tell the performers at a bankrupt female impersonator club that she was shutting the doors. Other businesses that Heide has operated as a trustee include: a blood testing laboratory, an art frame manufacturing shop, a refrigeration equipment manufacturer, an auto supply business, a delivery/messenger service, and an audio visual provider specializing in large arenas and stadiums.

Heide recognizes how emotional the bankruptcy process can be for all concerned and believes that respect and courtesy are due to all parties. It is especially gratifying for Heide to work through complex, tangled cases and bring about a full resolution for all parties.

On a personal note, in her first fourteen months as a trustee, Heide had two children, Catherine and Teddy, who are now eight and nine years old. Heide and her family reside in San Pedro, are avid UCLA fans and enjoy attending all of the UCLA football and basketball games.

## **DISCLOSURE OF RELATED CASES**

Although the revisions to the Local Bankruptcy Rules were effective May 3, 2004, the UST continues to see cases with no disclosure or inadequate disclosure of prior related cases. The revision to Local Bankruptcy Rule 1015-2 makes it clear that the definition of related cases applies to all cases which have been previously filed at any time. The clarification removes the perceived ambiguity that the definition of a related case applied only to those filed within the prior six year period. Before the debtor executes the Official Form 1015-2 under penalty of perjury, practitioners should be diligent to check the PACER system in the district. When checking for prior cases in the Los Angeles PACER system, remember that older cases can be found under the "Los Angeles Archives" section. You will find this option in the drop down button under the "Select a Division" option."



## **PHOTOS FROM THE CHAPTER 7 TRUSTEE SEMINAR SEPTEMBER 2004**



Mark A. Redmiles, Trial Attorney  
And Civil Enforcement Coordinator  
Executive Office For U.S. Trustees



E. Lynn Schoenmann  
Chapter 7 Trustee, San Francisco



Region 16 Panel Trustees Enjoying Seminar

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## **FEDERAL BAR ASSOCIATION'S ANNUAL BANKRUPTCY ETHICS SYMPOSIUM**

**September 24, 2004, Los Angeles**



U. S. Trustee Steven J. Katzman (middle) makes a point about “unbundled” legal services. Seated with Mr. Katzman on the panel are consumer attorney Warren Brown (left) and Judge Thomas B. Donovan (right). The Symposium consisted of four panels. Each panel examined different ethical issues, such as attorney-client communications, fees, and the Court’s attorney discipline system. OUST Los Angeles Trial Attorney Ron Maroko co-chaired the event.

## DIRECTOR PRESENTS CIVIL ENFORCEMENT AWARD TO RIVERSIDE OFFICE



On December 1, 2004, Lawrence A. Friedman, Director of the Executive Office for U.S. Trustees, visited the Riverside office to present them with the Civil Enforcement Award for 2004.

## WATCHDOG MASCOT?



On November 10, 2004, U.S. District Court Judge David O. Carter hosted the 229<sup>th</sup> birthday celebration of the United States Marine Corps outside his courtroom at the Ronald Reagan Federal Building and U.S. Courthouse. Judge Carter, a former Marine Corps Officer, served as platoon commander at Khe Sanh during the siege of that base in 1968, where he was wounded and awarded a Bronze Star. The birthday celebration included judges, Marine Corps veterans, federal employees, and the unofficial Marine Corps mascot "Simon the Bulldog." Pictured left are Assistant United States Trustee Arthur N. Marquis and Trial Attorney Michael Hauser of the Santa Ana Office of the U.S. Trustee trying to persuade *Simon* to become Region 16's official Watchdog.